

Republic of the Philippines  
**CENTRAL BOARD OF ASSESSMENT APPEALS**  
M a n i l a

BENGUET CORPORATION,  
Petitioner-Appellant,

CBAA Case No. L-10

- versus -

BOARD OF ASSESSMENT APPEALS  
OF THE PROVINCE OF ZAMBALES,  
Appellee,

- and -

PROVINCIAL ASSESSOR OF  
ZAMBALES and MUNICIPAL  
ASSESSOR SAN MARCELINO,  
ZAMBALES,  
Respondents-Appellees.

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## R E S O L U T I O N

Petitioner-Appellant, Benguet Corporation, files the Motion for Reconsideration on the Decision of this Board affirming in toto the Decision of the Local Board of Assessment Appeals (LBAA) of the province of Zambales dismissing its appeal seeking a new exemption from realty tax of its Bayarong tailings dam and the land submerged therein, in the Benguet Corporation-Dizon Copper Operations (BC-DCO), San Marcelino, Zambales, for lack of merit. This was contextually followed by a Supplemental Motion for Reconsideration.

Petitioner-Appellant assigns as error this Board's finding that Petitioner's tailings dam is not machinery and equipment used for pollution control and environmental protection which is exempt from the payment of real property tax under Section 234(e) of the Local Government Code of 1991 and alleges the following:

1. "The Honorable Board does not in fact dispute that Petitioner's tailings dam is an 'equipment'. Moreover, the mining law considers the dam as an 'equipment'".
2. "The Honorable Board cavalierly ignored legislative history in interpreting the statutory definition of 'machineries' and equipment".
3. "The Honorable Board has read into the statute something that is not there, thus arriving at an erroneous conclusion".

4. "There is also no legal requirement that the pollution control device, in order to be exempt, must be able not only to transform an otherwise harmful waste matter into a harmless substance but also into a useful product."
5. "If only the Honorable Board would read the Local Government Code and the Philippines Mining Law together, the intention to exempt tailings dam becomes more evident."

In its Decision, this Board was explicit in declaring that tailings dam is not machinery according to Sec. 199(o) of the Local Government Code of 1991 (R.A. 7160):

"Machinery' embraces machines, equipment, mechanical contrivances, instruments, appliances or apparatus which may or may not be attached, permanently or temporarily, to the real property. **It includes the physical facilities for production, the installations and appurtenant service facilities,** those which are mobile, self-powered or self-propelled, and those not permanently attached to the real property which are actually, directly, and exclusively used to meet the needs of the particular industry, business or activity and which by their very nature and purpose are designed for, or necessary to its manufacturing, mining, logging, commercial, industrial or agricultural purpose." (Underling supplied)

From the above-definition, to be "machinery" is to be "physical facilities for production", or "service facilities." The tailings dam is neither (a) "physical facilities for production" nor (b) "service facilities". It could, however, pass as facility for production if it could transform an otherwise harmful waste matter, as the tailings, not only into a harmless substance but also into a useful product. As it is, the tailings dam is no more than a goodly constructed landfill, a dumping ground for the mine's garbage, the tailings.

As to the following proceedings, on the deliberations of Sec. 234(c), R.A. 7160, (cited by Petitioner-Appellant):

"HON. DE PEDRO. How about dams and reservoirs and watershed area.

HON. OSMENA. Wala yun eh.

HON. PATERNO: Well, the dams and reservoirs would, I suppose, be considered as machinery and equipment.

ONE VOICE. Approved. x x x"

It is obvious that the "dams" referred therefor are not and could not be tailings dams: they go together with "reservoirs and watershed area", which could only mean such dams as the La Mesa and the like. La Mesa dam and its kind, "as distinguished from tailings dams, are 'facilities for production' of water

and/or generation and transmission of electric power.” La Mesa dam, therefore, is “machinery”, tailings dam is not.

WHEREFORE, Petitioner-Appellant’s Motion for Reconsideration, together with its Supplemental Motion for Reconsideration is hereby denied for lack of merit.

SO ORDERED.

Manila, Philippines, May 27, 1998.

*(Signed)*  
MARGARITA G. MAGISTRADO  
Chairman

*(Signed)*  
ANGEL P. PALOMARES  
Member

*(On Leave)*  
BENJAMIN M. KASALA  
Member